

Attachment to Independent Case Review Report  
for CDRU # 5284 Case File # 95-266762.

Material Examiner Malone (RO)

Remarks:

After research it has been determined that the  
NLET message dated 5-16-85 is missing/incomplete  
from the case file at the time of review by the  
Independent Scientist.

## INDEPENDENT CASE REVIEW REPORT

Independent Review conducted by: Catherine Levine

Area(s) of Expertise: Hair + Fiber

Review commenced at: 10:55 pm (Time), 5/17/99 (Date)

File #: 95-266762

Laboratory #(s): 8504290035 SRQTKVY

### Examiner(s) & Symbols

	Reviewed	Not Reviewed		Reviewed	Not Reviewed
<u>RQ</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>TK</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
<u>VY</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input checked="" type="checkbox"/>

### Materials Reviewed

Trial testimony transcript(s) of: Michael P. Malone

Testimony Date(s): Oct. 29 1997 <sup>cell</sup> Pages: 856 - 898

Laboratory Report(s): do not have a date → rec date from Ms Beers  
as 10/30-31/86

Laboratory Number: 50429003 SRQTKVY Date: 9/10/85

Laboratory Number: \_\_\_\_\_ Date: \_\_\_\_\_

Laboratory Number: \_\_\_\_\_ Date: \_\_\_\_\_

Examiner Bench Notes of: Technician r Malone

Laboratory Number: 50429003

Laboratory Number: \_\_\_\_\_

Laboratory Number: \_\_\_\_\_

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Initials: cell

Was any other material reviewed?  Yes  No

If yes, please identify and/or describe the material: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Results of Review

File #: 95-266762

Item or Specimen # Reviewed: Q1, Q3, Q4, Q8, Q9

Q1, Q23, Q26, Q31-Q33, Q36, Q37 K2, K3, K4, K6, K7

#### Review of Laboratory Report(s) and Bench Notes:

Note: Numbered comments are required below or on  
additional pages for any "No" or "Unable to Determine" Responses

- 1) Did the examiner perform the appropriate tests in a scientifically acceptable manner, based on the methods, protocols, and analytic techniques available at the time of the original examination(s)?  
 Yes  No  Unable to Determine
- 2) Are the examination results set forth in the laboratory report(s) supported and adequately documented in the bench notes?  
 Yes  No  Unable to Determine

#### Review of Testimony:

Note: Numbered comments are required below or on  
additional pages for any "No" or "Unable to Determine" Responses

See narrative

Transcript not available.

- 3) Testimony consistent with the laboratory report(s)?  Yes  No  Unable to Determine
- 4) Testimony consistent with the bench notes?  Yes  No  Unable to Determine
- 5) Testimony within bounds of examiner's expertise?  Yes  No  Unable to Determine

Comments

(Set forth by above question #, if applicable.  
Use "Additional Comments" Sheet, if needed)

Review of LAB report: (1) This file does not contain adequate scientific documentation to determine if appropriate tests were conducted. Ex. Abbreviations are used to describe characteristics of suspect strain ( $K_6 + K_7$ ). Not all abbreviations can be interpreted by this examiner. No characteristics are listed for Q hairs. Reviewer has not been given hair policies, protocols, etc. from the time of this examination. While a hair comparison appears to have been conducted, it is not clear to this examiner if they were done in a scientifically acceptable manner. We have been told that no written policies, protocols exist. <sup>as per Dr. Doug Dendruck</sup>

(2) No - the results are not supported + adequately documented. In my opinion, an independent reviewer could NOT reach those <sup>all</sup> any conclusion based on this documentation. - cont. on next pg.

Review completed at: 5:30 pm (Time), 5/17/99 (Date)

Total time spent conducting review (to nearest 1/4 hour): 5.5 hrs.

I hereby certify that I conducted this review in an independent, unbiased manner and that the results of my review are fully documented on this report consisting of a total of 9 pages.

- 5 handwritten pages + 4 pages per computer

Cathryn L. Levine 5/17/99  
(Signature) (Date)

Additional Comments  
(Set forth by question #, if applicable)

File #: 95-266762

(2) The report states the "some individual microscopic characteristics." The word 'individual' is confusing + may be misleading. Examples exist (see handwritten notes) where exculpatory evidence is not reported in case report. Hairs that may be exculpatory are identified in notes and testified to - but they are omitted from report. Reviewer cannot determine if this was laboratory policy at the time. In any event, crushing possible exculpatory evidence is problematic and possibly unethical.

The 3 questions - (#3) (4) - (5) - are not adequate questions to review the testimony in this case. One of the questions you should be asking is whether the testimony scientifically accurate? In this case Mr. Malone's <sup>statement</sup> response that you need at least 15 characteristics in order to identify a hair (emphasis <sup>in</sup> <sub>in</sub>) is without a scientific basis. Mr. Malone also overstates the uniqueness of hair on several occasions (see CLL notes, pg. 3). Also the statement regarding 2 cases in 10,000 individuals can be misleading - whether it is intentionally misleading - meant to be misleading I do not know. Examiner explains what the 2 in 10,000 means unambiguously but some attorneys may not pursue this area.

Some of the opinions expressed in this testimony are without scientific basis, i.e. 15 characteristics are necessary.

The testimony related to the uniqueness of hair is also without scientific basis.

For more info or detail regarding these issues - see 5 pages of handwritten notes by CLL. These notes are attached.